FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL APPLICATION NO. 4265 OF 2004.
IN
CRIMINAL APPEAL NO. OF .

Mrs. Pramodini Prabhakar Khute. ..Applicant.
vs.
The State of Maharashtra & anr. .. Respoondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri Rakesh D.Dave for the applicant.
Mrs. Dakshabai Vinayak Gode- respondent No.2 in person.
Shri D.P.Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 2-2-2005.

P.C.:

1. Heard learned Counsel appearing on behalf of the applicant and respondent No.2 in person.

2. The applicant- appellant has filed this appeal challenging the judgment and order passed by Court of Metropolitan Magistrate, 29th Court, Dadar. By the said order, the trial Court was pleased to dismiss the complaint of the appellant for want of prosecution.

3. Learned Counsel appearing for the applicant-appellant submitted that the complainant could not remain present on

6th August 2004 and application for exemption was filed by her counsel. This application, however, was rejected by the trial Court. The respondent No.2 has appeared in person and appeal is fixed for hearing at her request today. She states that she is unable to engage any advocate.

4. Appeal is admitted. Appeal is taken up for final hearing by consent forthwith.

5. In my view, the order passed by the trial Court cannot be sustained. The trial Court has not observed that the complainant was not diligent in appearing in the trial Court, or that she did not remain present on number of days. Application for exemption was filed by her counsel. However, said application was rejected without assigning any reason. In these circumstances, the order passed by the trial Court cannot be sustained and the same is, therefore, set aside. The complaint stands restored to file. The trial Court is directed to decide the complaint on merits within a period of 3 months from the date of receipt of this order.

6. Appeal is allowed in the above terms.

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